

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Fred Hewitt Smith et al.

Title: SECURE DETECTION
NETWORK SYSTEM

Appl. No.: 10/600,738

Filing Date: 6/20/2003

Patent No.: 7475428

Grant Date: 1/6/2009

Examiner: Beemnet W. Dada

Art Unit: 2435

Confirmation 7377
Number:

REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT
UNDER 37 C.F.R. §1.705

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Applicants respectfully request reconsideration of the Patent Term Adjustment (PTA) determined for the captioned patent, which issued on 1/6/2009 as U.S. Patent No. 7475428.

The Patent Office determined that the patent was entitled to 596 days of PTA. Applicants believe that this PTA determination was made in accordance with the “Explanation of 37 CFR 1.703(f) and of the United States Patent and Trademark Office Interpretation of 35 U.S.C. §154(b)(2)(A)” published at 69 Fed. Reg. 34238 (Jun. 21, 2004). Under that interpretation of the PTA statute, any PTO delay under 35 U.S.C. § 154(b)(1)(A) is deemed to overlap with any 3-year maximum pendency delay under 35 U.S.C. § 154(b)(1)(B), and so, as a practical effect, PTA may be awarded under §154(b)(1)(A) or §154(b)(1)(B), but not both.

On September 30, 2008, the United States District Court for the District of Columbia issued a decision finding that the U.S. Patent and Trademark Office's interpretation of the PTA statute is incorrect. *Wyeth v. Dudas*, Civ. Action No. 07-1492 (JR) (Sep. 30, 2008). The court determined that, under the correct interpretation of the PTA statute, periods of "overlap" are limited to "periods of time . . . [that] occur on the same day." *Wyeth*, slip op. at 8. Thus, a PTO delay under §154(b)(1)(A) overlaps with a delay under §154(b)(1)(B) only if the delays "occur on the same day." *Id.*

Applicants have recalculated PTA for the captioned patent under the court's interpretation of the PTA statute, and have determined that the patent is entitled to 1140 days PTA, as shown on the attached sheet, which shows the relevant delays under 37 CFR §§1.702(a) and (b), and under 37 CFR §§1.703(a) and (b).

The attached sheet details the circumstances during the prosecution of the application resulting in the patent that constitute a failure to engage in reasonable efforts to conclude processing or examination of such application as set forth in § 1.704.

(a) Total of non-overlapping PTO delay under §154(b)(1)(A) & (B):	1328 days
(b) Total Applicant delay:	188 days
Final PTA Determination:	1140 days

Applicants therefore respectfully request that the patent be accorded 1140 days PTA.

The patent is not subject to a terminal disclaimer.

Payment of the requisite fee is submitted herewith. Should no proper payment be enclosed herewith, as by the credit card payment instructions in EFS-Web being incorrect or absent, resulting in a rejected or incorrect credit card transaction, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 19-0741.

However, because this PTA error is due to a Patent Office error in interpreting and applying the PTA statute, a refund of the fee is respectfully requested.

Respectfully submitted,

Date March 4, 2009

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Patent Term Adjustment Calculation System

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Docket Number: 081913-0118

Application Number: 10/600738

Patent Number: 7475428

	Event Description	Event Date	Days from Filing	PTO Days	Applicant Days
Edit Delete	Application Filing Date	06/20/2003	0		
Edit Delete	IDS NOT falling under 1.704(c)(6), (8) or (10) filed at PTO	07/29/2003	39		
Edit Delete	Notice to File Missing Parts	09/24/2003	96		
Edit Delete	Response to Notice to File Missing Parts	11/24/2003	157		
Edit Delete	IDS NOT falling under 1.704(c)(6), (8) or (10) filed at PTO	04/01/2004	286		
Edit Delete	Restriction Requirement	07/15/2004	391		
Edit Delete	Restriction Requirement Response Received at PTO	08/23/2004	430		
	Restriction Requirement Response Filed + 4 months	12/23/2004	552		
	3 Year Period Starts	06/20/2006	1,096		
Edit Delete	Non-Final Office Action	11/03/2006	1,232	(680)	
	Non-Final Office Action + 3 months	02/03/2007	1,324		
Edit Delete	Non-Final Office Action Rsp. Rcv'd at PTO	05/04/2007	1,414		90
Edit Delete	IDS under 1.704(c)(8) filed at PTO	05/11/2007	1,421		7
Edit Delete	Final Office Action	07/30/2007	1,501		
	Final Office Action + 3 months	10/30/2007	1,593		
Edit Delete	Notice of Appeal Received at PTO	01/29/2008	1,684		91
Edit Delete	Request For Continued Examination	08/12/2008	1,880	(784) 1328	
	3 Year Period Stopped	08/12/2008	1,880		
Edit Delete	Notice of Allowance	10/09/2008	1,938		
Edit Delete	Issue Fee Paid	11/24/2008	1,984		
Edit Delete	Patent Grant Date	01/06/2009	2,027		
			Totals:	1,328	188
			PTA:	1,140	

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